Supreme Court, U.S.
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No. 00-1903

In the

Supreme Court of the United States

ROGER and VIRGINIA GALLAND,

Petitioners,

v.

CITY OF CLOVIS, CLOVIS CITY COUNCIL, and CLOVIS MOBILE HOME RENT COMMISSION,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of California

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND NEW ENGLAND LEGAL FOUNDATION IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where a trial court found unchallenged substantial evidence that the process used by a city as part of its rent control program was confiscatory, in that it denied the owners of a regulated mobile home park a reasonable return, and used *ad hoc* procedures the state supreme court aptly characterized as the product of "unjustified" "bureaucratic bungling" that consumed more in regulatory transactional costs than the amount in controversy,

1. Was it permissible for the California Supreme Court to hold that the mobile home park owners are barred from pursuing an action under 42 U.S.C. § 1983 for deprivations of both substantive and procedural due process, unless they first exhaust lengthy (and newly created for this case) state remedial procedures, in violation of *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982)?

2. Was it permissible for the California Supreme Court to restrict due process recovery under 42 U.S.C. § 1983 to those cases in which the government "deliberately flouts the law," in conflict with other courts that use a broader standard?

3. Is it time for this Court to rectify California's maverick jurisprudence that conditions the availability of 42 U.S.C. § 1983 in land use cases on exhaustion of state law procedures, and return California to the constitutional regime laid down in *Felder v. Casey*, 487 U.S. 131 (1988)?

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INTEREST OF AMICI CURIAE[1]

For more than 25 years, Amicus Pacific Legal Foundation (PLF) has been litigating in support of the rights of individuals to make reasonable use of their property. PLF attorneys have been before this Court on three occasions representing individuals whose right to use their property was unlawfully denied by government agencies. *See Palazzolo v. Rhode Island*, No. 99-2047, 2001 U.S. LEXIS 4910 (June 28, 2001); *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997); *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). PLF has participated as amicus curiae in nearly every major real property takings case heard by this Court in the past two decades. PLF also participated as amicus curiae in the Galland's case when it was before the California Supreme Court.

Amicus New England Legal Foundation (NELF), a nonprofit, public interest law firm, was incorporated in 1977. Its membership consists of individuals, businesses, and others who believe in promoting balanced economic growth for New England, protecting the free enterprise system, and defending economic rights. NELF's more than 130 members and supporters include a cross-section of large and small businesses from all parts of New England and the United States. NELF has regularly appeared in state and federal court, as party or counsel, in cases raising issues of general economic significance to the business community. *See, e.g., Palazzolo v. Rhode Island*, 2001 U.S. LEXIS 4910; *Crosby v. National*

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[1] Pursuant to Rule 37.6, Amici Curiae affirm that no counsel for any party authored this brief in whole or in part and that no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

Pursuant to this Court's Rule 37.2(a), Amici Curiae affirm that this brief is filed pursuant to an agreement of counsel of record for all parties. The agreement was docketed on July 11, 2001.

Foreign Trade Council, 530 U.S. 363 (2000); *UNUM Life Insurance Company of America v. Ward*, 526 U.S. 358 (1999); *Lockheed Corp. v. Spink*, 517 U.S. 882 (1996); *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996); *Estados Unidos Mexicanos v. DeCoster*, 229 F.3d 332 (1st Cir. 2000); *Reich v. Southern New England Telecommunications Corp.*, 121 F.3d 58 (2d Cir. 1997). NELF is concerned that the opinion of the California Supreme Court may serve as precedent in other states to eviscerate federal remedies for state administrative overreaching.

PLF and NELF believe that their public policy perspective and litigation experience will provide an additional viewpoint on the issues presented in this case.

STATEMENT OF THE CASE

Mobilehome park owners Roger and Virginia Galland filed suit to overturn decisions of the Clovis Rent Review Commission and Clovis City Council (together City) to deny, in whole or in part, proposed rent increases. The Gallands sought damages for inverse condemnation, denial of substantive and procedural due process under the state and federal constitutions, and violation of civil rights under 42 U.S.C. section 1983.

The trial court held that City violated the Gallands' procedural and substantive due process rights and awarded $1,019,261.50 in damages pursuant to section 1983. In a unanimous opinion, the California court of appeal affirmed, holding that

> Clovis's application of the ordinance resulted in a rent review process that was unfair and so burdensome and expensive that it violated the

> Gallands' procedural and substantive due process rights and deprived them of a fair return on their regulated property.

Galland v. City of Clovis, 73 Cal. App. 4th 371, 373 (1999).

The California Supreme Court reversed. The court relied on its decision in a case which did not involve a 42 U.S.C. section 1983 claim—*Kavanau v. Santa Monica Rent Control Board*, 941 P.2d 851 (Cal. 1997)—to impose new state administrative procedures which must be satisfied before a section 1983 claim is available in state court. In *Kavanau*, a majority of the California Supreme Court held that the "adjustment of future rents was generally sufficient to compensate for prior rent ceilings that were set so low as to be confiscatory." *Galland v. City of Clovis*, 16 P.3d 130, 134 (Cal. 2001). In this case, the California Supreme Court held that landlords who seek section 1983 damages from allegedly confiscatory rent control regulations must show that a confiscatory rent control ceiling was imposed and that relief via writ of mandate and a *Kavanau* adjustment is inadequate. *Galland*, 16 P.3d at 145. The court imposed this administrative hurdle even where, as in this case, the source of the constitutional injury is the administrative hearing process itself.

The ruling conflicts with this Court's holdings in *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999), *Felder v. Casey*, 487 U.S. 131 (1988), *Wilson v. Garcia*, 471 U.S. 261 (1985), and *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 498 (1982).

SUMMARY OF ARGUMENT

The California Supreme Court's decision in this case presents the question whether the remedy provided by 42 U.S.C. section 1983 applies to some federal rights more than others. Although the City of Clovis' rent review process as applied to the Gallands was time-consuming, burdensome,

expensive, and flawed, and was implemented by the use of secret procedures, obstructionist practices, and bureaucratic bungling, the court found that the Gallands have no section 1983 remedy. Instead, the Gallands' only remedy is no remedy at all—the court sent them back to the City to seek a rent adjustment to make up for years of confiscatory rents and abuse suffered as a result of City's administrative hearing process. As Justice Janice Brown pointed out in her dissenting opinion, "we have dipped into a 13-year-old proceeding, made some solemn pronouncements, and then turned our attention to other matters, but for the Gallands, it is a quest for justice that will never end." *Galland v. City of Clovis*, 16 P.3d at 163.

The court's cavalier treatment of the Gallands' federal right to due process was based on the view that the case dealt with economic injuries rather than the discriminatory or physically abusive behavior typically associated with civil rights actions brought under section 1983. That is a distinction which was specifically rejected by this Court in *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, and *Wilson v. Garcia*, 471 U.S. 261.

ARGUMENT

I

SECTION 1983 PROVIDES A UNIQUE FEDERAL REMEDY FOR A BROAD RANGE OF CONSTITUTIONAL VIOLATIONS

The Civil Rights Act, 42 U.S.C. section 1983, provides, in relevant part, that every person who, under color of state law, subjects another person to the deprivation of any rights, privileges, or immunities secured by federal law, shall be liable to the injured party. Thus, a section 1983 claim arises when a local government uses power to deprive a person of a federal right, and that entity is liable to the aggrieved party for damages suffered. *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 701 (1978).

Section 1983 hails from the Civil Rights Acts enacted after the Civil War to enforce newly adopted amendments to the Constitution—amendments intended to "dismantle the legal framework of slavery and to guarantee freed slaves the same political rights enjoyed by their former masters." Harry A. Blackmun, *Section 1983 and Federal Protection of Individual Rights—Will the Statute Remain Alive or Fade Away?*, 60 N.Y.U. L. Rev. 1, 4 (1985).[2] But because the drafters of the Fourteenth Amendment did not limit the grant of constitutional rights enforceable against the States to the racial concerns of the moment (*see id.* at 4), the remedy for violation of federal rights has been applied to a wide range of topics.[3] As Justice Blackmun explained:

> Today, § 1983 properly stands for something different—for the commitment of our society to be governed by law and to protect the rights of those without power against oppression at the hands of the powerful. When the Fourteenth Amendment became part of the Constitution, it committed this Nation to

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[2] The Reconstruction Amendments, numbers Thirteen, Fourteen, and Fifteen, were adopted in 1865, 1868, and 1870, respectively. *Id.* at 4.

[3] Constitutional claims have been alleged under section 1983 covering a wide range of topics, some of which were catalogued in *Wilson v. Garcia*, 471 U.S. at 273:

> [D]iscrimination in public employment on the basis of race or the exercise of First Amendment rights, discharge or demotion without procedural due process, mistreatment of schoolchildren, deliberate indifference to the medical needs of prison inmates, the seizure of chattels without advance notice or sufficient opportunity to be heard . . . .

(Footnotes omitted.)

> an order in which all governments, state as well as federal, were bound to respect the fundamental rights of individuals.

Blackmun, *supra*, at 28.

Justice Blackmun examined the proper scope of federal protection of individual rights under section 1983 and concluded that limitations on the scope of the statute should be viewed skeptically in light of the importance of maintaining a federal forum for the protection of federal rights. *Id.* He noted that, in some contexts, this Court has not allowed procedural and substantive doctrines that limit the role of section 1983. *Id.* For example, this Court has specifically declined to read into the statute a requirement that a section 1983 litigant exhaust state administrative remedies. *Id.*; 516; *Felder v. Casey*, 487 U.S. at 153; *Patsy v. Board of Regents of the State of Florida*, 457 U.S. at 500-01. In *Felder v. Casey*, this Court said that a state's attempt to condition the right to recover compensation for the deprivation of civil rights

> upon compliance with a rule designed to minimize governmental liability, and that directs injured persons to seek redress in the first instance from the very targets of the federal legislation, is inconsistent in both purpose and effect with the remedial objectives of the federal civil rights law.

Felder v. Casey, 487 U.S. at 153.

II

THE CALIFORNIA SUPREME COURT DENIED A SECTION 1983 REMEDY FOR DUE PROCESS VIOLATIONS IN THE CONTEXT OF PROPERTY RIGHTS

Disregarding this Court's precedent, the California Supreme Court denied the Gallands' section 1983 remedy and sent them back to the very rent control board that imposed

confiscatory rents and subjected them to an administrative hearing process that even the majority characterized as involving "shifting, costly, and at times ill-considered requests for information" (*Galland v. City of Clovis*, 16 P.3d at 153), "bureaucratic bungling" (*id.*), and "unjustified delay" (*id.* at 156).[4] The *Galland* majority held that landlords who seek section 1983 damages from allegedly confiscatory rent control regulations must show that a confiscatory rent control ceiling was imposed and that relief via a writ of mandate and adjustment of future rents is inadequate. *Galland*, 16 P.3d at 145. And the majority set out a labyrinthine course of action to be followed if questions arise about procedural demands which may be compensable under section 1983. *Id.* at 153.

Associate Justice Janice Brown dissented and suggested that the majority's decision was the result of "the reduced importance the majority gives to the constitutional interest that is at stake." *Id.* at 159. Justice Brown wrote that the "real mischief of the majority's opinion lies in its disparate treatment of property rights when enforcing section 1983" (*id.* at 166), and noted that the majority would not "be so quick to eviscerate

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[4] California Associate Justice Janice Brown put it more colorfully:

> Clovis said to the Gallands, in effect: Before you can raise rents, you must prove you're not making too big a profit, and we will make it impossible, as a practical matter, for you to meet this burden of proof. The Gallands responded to Clovis's regulatory arrogance in much the same way as Lewis Carroll's Alice did when she found herself in a similar situation: "'I don't think they play at all fairly,' Alice began, in rather a complaining tone, '. . . and they don't seem to have any rules in particular; at least, if there are, nobody attends to them—and you've no idea how confusing it is . . . .' " (Carroll, Alice's Adventures in Wonderland (1985 ed.) p. 115.) To which the majority replies: Go back and try again.

Galland v. City of Clovis, 16 P.3d at 160 (Brown, J., dissenting).

section 1983 in a classic civil rights case" (*id.* at 162). Examples of "classic civil rights cases" include such facts as a black firefighter being denied promotions and raises in a city with a long history of discrimination or a city discriminating against a black-owned business when awarding contracts. *Id.* at 162. Justice Brown emphasized that the availability of a remedy under section 1983 does not depend on the nature of the underlying claim, but rather on the existence of arbitrary and unfair treatment by government.

> It is no answer to say that this case concerns merely an economic injury and that a race is a "suspect class" requiring different treatment under the Constitution from price regulation. Arbitrary and unfair treatment by the government is not merely an economic injury; it is also, like race discrimination, an affront to personal dignity. While the standards for finding a constitutional violation may differ, the Constitution does not establish a hierarchy of rights in which some are deemed more worthy of protection than others.

Id. (citation omitted).

III

SECTION 1983 CLAIMS BASED ON PROPERTY RIGHTS ARE ENTITLED TO THE SAME SCRUTINY AS OTHER SECTION 1983 CLAIMS

Indeed, this Court does not classify section 1983 claims based on the nature of the underlying right asserted. *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. at 711; *Wilson v. Garcia*, 471 U.S. at 271-72. In *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, developer Del Monte Dunes submitted one proposal after another to develop an

ocean-front parcel of land (526 U.S. at 693) in what the majority referred to as "the tortuous and protracted history of attempts to develop the property" (*id.* at 699). Although Del Monte Dunes complied numerous times with the City's ever-changing conditions of development, the development proposals were repeatedly rejected by the City of Monterey. Del Monte Dunes brought an action pursuant to 42 U.S.C. section 1983, alleging that rejection of the final development proposal violated their right to Due Process and Equal Protection and constituted a regulatory taking. One of the questions before this Court was whether a regulatory takings case brought pursuant to section 1983 was properly submitted to a jury.

The City of Monterey urged this Court to determine the applicability of the Seventh Amendment right to a jury by looking at the underlying constitutional right asserted (a regulatory taking) instead of the statutory basis of the claim (section 1983). *Id.* at 711. This Court declined, citing the analysis in Justice Scalia's concurring opinion. *Id.*

> [Section] 1983 is, so to speak, a prism through which many different lights may pass. . . . I believe that, in analyzing this cause of action for Seventh Amendment purposes, the proper focus is on the prism itself, not on the particular ray that happens to be passing through in the present case.

Id. at 723-24 (Scalia, J., concurring in part and concurring in the judgment).

Justice Scalia compared the analysis in *Wilson v. Garcia*, 471 U.S. 261, where the Court applied 42 U.S.C. section 1988(a) to determine what statute of limitations applies in section 1983 cases.

> In applying this provision, the Court identified as one of the steps necessary for its analysis resolution of precisely the question I have been discussing here: "We must . . . decide whether all § 1983 claims should be characterized in the same way, or whether they should be evaluated differently depending upon the varying factual circumstances and legal theories presented in each individual case." 471 U.S. at 268. The Court concluded (as I do here) that all § 1983 claims should be characterized in the same way.

City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. at 725 (Scalia, J., concurring in part and concurring in the judgment).

Thus, in *Galland*, the California Supreme Court was wrong to focus on the nature of the claim—whether it is characterized as one relating to economic injuries, property rights, or rent-control—when it should have concentrated on the injuries suffered by the Gallands as a result of the violation of their civil rights by the City of Clovis. The violations of civil rights in the Gallands' case are similar to those in other section 1983 cases arising from abusive administrative proceedings—cases where section 1983 remedies were available to property owners. *See, e.g., City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. at 698-99, discussed above, where over a five-year period Del Monte Dunes attempted to satisfy the City's "shifting and sometimes inconsistent positions" by submitting 19 different site plans. Del Monte Dunes received five formal decisions, none of which permitted development of its ocean-front parcel. *Id.* at 698.

Abuse of government power takes different forms. While allegations of denial of civil rights in cases of police misconduct (*e.g.*, *Monroe v. Pape*, 365 U.S. 167, 169 (1961)) and racial discrimination (*e.g.*, *Patsy v. Board of Regents of the State of Florida*, 457 U.S. at 498) are more sympathetic on a visceral level, abuse of government power is just as real in the context of property rights.

> "[T]he fourteenth amendment's due process clause protects property no less than life and liberty. . . . To the extent that arbitrary or malicious use of physical force violates substantive due process, there is no principled basis for exempting the arbitrary or malicious use of other governmental powers from similar constitutional constraints.

Sinaloa Lake Owners Association v. City of Simi Valley, 882 F.2d 1398, 1408-09 (9th Cir. 1989).

Section 1983 provides damages for constitutional violations regardless of the circumstances of the deprivation at issue. This Court should grant review of this case to ensure that property owners receive the same constitutional protections as others whose civil rights are violated.

> If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.

James Madison, *National Gazette, March 29, 1792, in Madison Writings* 517 (Literary Classics of the United States, Inc. ed. 1999).

CONCLUSION

Amici respectfully request that this Court grant the petition for writ of certiorari.

DATED: July, 2001.

Respectfully submitted,

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